

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

Paul Turinsky

Court of Appeals No. E-12-077

Appellant

Trial Court No. 2011-CV-0605

v.

Delphi Automotive Systems,  
LLC, et al.

**DECISION AND JUDGMENT**

Appellees

Decided: June 21, 2013

\* \* \* \* \*

Francis J. Landry, for appellant.

Joan Torzewski, for appellees.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, which granted appellees' motion for summary judgment. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} On August 25, 2011, appellant, Paul Turinsky, a longtime employee of an Ohio automotive plant originally owned by General Motors and subsequently sold to successor owners, filed suit against his employers, Delphi Automotive Systems, LLC and Kyklos Bearing International, LLC, alleging failure to furnish reasonable accommodations in connection to a claimed disability not related to any workplace incident or injury. The lawsuit also named the various unions representing plant employees, alleging that they failed to adequately represent appellant. Subsequently, on December 14, 2011, appellant dismissed his employers from the lawsuit.

{¶ 3} Appellant's suit essentially asserted that the unions had failed to adequately assist him in receiving workplace accommodations related to appellant's desired manner of having daily pain patches applied by his wife based upon a neuromuscular diagnosis. In addition, appellant claimed that the unions did not adequately represent him in grievance appeals filed against his employer. On November 9, 2012, the trial court granted summary judgment in favor of the unions. On December 7, 2012, appellant filed a notice of appeal.

{¶ 4} On appeal, appellant sets forth the following two assignments of error:

The trial court committed reversible error in granting summary judgment to defendant unions when questions of material fact remained over the reasonableness of Turinsky's requested accommodation.

The trial court committed reversible error in granting summary judgment to defendant unions when questions of material fact remained over whether the unions fulfilled their representative obligations.

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. Appellant commenced employment with General Motors in 1979 at its Sandusky, Ohio plant. The company changed ownership several times during the term of appellant's employment at the facility. Appellant continued employment under the successor owners. In August 2005, appellant was "bumped" from his third-shift position by an employee with more seniority. It is not disputed that the other employee possessed greater seniority. It is also not disputed that this action was done in conformity with the terms of the applicable collective bargaining agreement. Nevertheless, appellant was highly dissatisfied.

{¶ 6} Appellant subsequently claimed that he suffers from "neurological musculoskeletal with spinal cord impairment and brain damage." All parties concur that such a condition is a disability, as recognized by R.C. 4112.01(A)(13).

{¶ 7} In conjunction with relaying this condition to his employer and representative unions, appellant simultaneously demanded that the condition somehow negated the seniority of the other employee, thereby enabling appellant to remain on his highly preferred third shift. In the course of this shift seniority dispute, appellant also now claimed that his wife, who is a registered nurse, needed to apply a pain patch to him

before he left for work each day. Appellant maintained that the modification of his schedule would unacceptably interfere with his wife's ability to apply his pain patches.

{¶ 8} In October 2005, appellant presented a medical note to his employers. The brief note summarily concluded that appellant "needed to work" third shift so that appellant's wife could "assist with pain patch."

{¶ 9} In response to this scenario, appellant's employer proposed a seemingly tenable accommodation in which appellant would be permitted to utilize the facility nurse to apply appellant's daily pain patch. Appellant would thereby still have access to a nurse to apply the patch and could also continue working on second shift. Regardless, appellant steadfastly refused the proposed accommodation. On the contrary, appellant demanded that his employer allow him to come into work up to four hours late each shift. Appellant's suggested arrangement would enable appellant's wife to apply the pain patches whenever she may or may not wake up each day within a four-hour window of time so as to not potentially disrupt her apparently inconsistent sleep schedule.

{¶ 10} At one point during the brief period appellant worked on second shift, he was sent home from work for an incident unrelated to his medical issue. When it was determined that appellant had not been the cause of the controversy, appellant was invited to return to work. However, appellant attempted to return to the workplace with a hidden recording device in direct violation of company policy. On later attempts to return to work, appellant would neither admit nor deny possessing a hidden recording device. Accordingly, he was barred from entering the premises.

{¶ 11} Following these events, the unions filed numerous grievances on behalf of appellant. The first grievance involved appellant being moved to third shift. The other grievances pertained to appellant being barred from returning to work due to his possession of a hidden recording device in violation of policy. Notably, the unions obtained sick pay for appellant. However, appellant refused to accept the sick pay because he wanted full compensation for the period. Appellant perceived the unions' obtaining of sick pay for him as "trickery."

{¶ 12} In January 2006, appellant returned to work. Significantly, he was able to return to third shift, based on his superior seniority. In April 2009, appellant was notified that his grievances were resolved. The answer of appellant's employer to one of the grievances was accepted by appellees. The other grievances were withdrawn. Appellant appealed the decision to the unions' appeals committee. The decision was ultimately upheld. Appellant failed to pursue one additional appeal option available to him.

{¶ 13} In May 2010, appellant exercised his right to transfer to a different automotive facility. This facility is a General Motors facility. This "flowback" practice allows employees previously originally employed by General Motors to return to work within the company. Appellant relocated to Lordstown, Ohio, to commence work at the Lordstown plant. In August 2011, appellant filed the underlying suit.

{¶ 14} In the first assignment of error, appellant maintains that the trial court erred in granting summary judgment to the unions. Appellant argues that a genuine question of material fact remained regarding the reasonableness of appellant's accommodation

request. We have carefully reviewed and considered the record of evidence. We do not concur.

{¶ 15} Appellate review of summary judgment determinations is conducted on a de novo basis, applying the same standard utilized by the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment shall be granted when there remains no genuine issue of material fact and, when considering the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 16} The objective reasonableness of an accommodation must be initially established by the individual seeking that accommodation. *DeBolt v. Eastman Kodak Co.*, 146 Ohio App.3d 474, 2001-Ohio-3996, 766 N.E.2d 1040, ¶ 72 (10th Dist.). Appellant concedes that he possesses this burden. However, the record reflects that appellant failed to establish the reasonableness of his requested accommodation. On the contrary, appellant simply concludes the accommodation to be reasonable. Notably, it consisted of a daily flexible schedule, contingent upon his wife's variable sleeping pattern despite the proposed accommodation by the employer of access to an on-site nurse to apply the daily pain patch.

{¶ 17} Despite appellant's employer offering appellant the daily opportunity to utilize an on-site nurse to apply the pain patch, appellant zealously refused to even try the proposed practical accommodation. Appellant alternatively demanded that he be

permitted to come to work at an indeterminate time within a four-hour window contingent upon when his wife would awake. We do not find this to be a reasonable accommodation request.

{¶ 18} Significantly, employers are not required to accommodate an employee's disabilities by violating contractual rights of other employees. *Rector v. Ohio Bur. of Workers' Comp.*, 10th Dist. No. 09AP-812, 2010-Ohio-2104, ¶ 12. The record reflects that appellant concedes this point. Accordingly, appellant's employer was in no way contractually obligated to accept appellant's accommodation request to override the seniority of another employee to ensure appellant remained on third shift. The disputed move was done in full accordance with appellant's own contract terms.

{¶ 19} The record clearly reflects that the accommodation rejected by appellant was reasonable. Conversely, the record clearly reflects the accommodation sought by appellant was not reasonable. No genuine issues of material fact remain regarding the reasonableness of the accommodation demanded by appellant or the one rejected by appellant. Wherefore, we find appellant's first assignment of error not well-taken.

{¶ 20} In the second assignment of error, appellant asserts that the trial court erred in granting appellees' motion for summary judgment because there are issues of material fact regarding whether the unions adequately represented appellant. In support of this assertion, appellant summarily claims that appellees filed "half-hearted" grievances on his behalf. Appellant also claims the representation was inadequate because the unions did not address paragraph 72 of the collective bargaining agreement.

{¶ 21} Paragraph 72 permits a limited seniority override to accommodate “employees who have been incapacitated at their regular work by injury or compensable occupational disease while employed.” The record clearly reflects that appellant’s claimed condition was not the result of workplace injury. Accordingly, paragraph 72 is inapplicable to appellant’s situation.

{¶ 22} The record reflects that the various grievances filed on appellant’s behalf were reviewed at multiple levels. The record further reflects the reasons for the failures of the grievances were legitimate and were fully conveyed to appellant. Appellant’s dissatisfaction does not constitute evidence of some sort of malfeasance by the unions. We find that the record shows no genuine issue of material fact remains regarding the adequacy of appellees’ representation of appellant. Wherefore, we find appellant’s second assignment of error not well-taken.

{¶ 23} We find based upon our independent review of this matter that the trial court properly granted summary judgment to the appellee unions. The judgment of the Erie County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.